Senate

General Assembly

File No. 64

February Session, 2008

Substitute Senate Bill No. 33

Senate, March 20, 2008

The Committee on Appropriations reported through SEN. HARP of the 10th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT IMPLEMENTING THE GOVERNOR'S RECOMMENDATIONS WITH RESPECT TO SOCIAL SERVICES PHARMACY PROGRAMS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (e) of section 17b-491 of the 2008 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(e) The commissioner shall establish an application form whereby a pharmaceutical manufacturer may apply to participate in the program. Upon receipt of a completed application, the department shall issue a certificate of participation to the manufacturer. Participation by a pharmaceutical manufacturer shall require that the department shall receive a rebate from the pharmaceutical manufacturer <u>for prescriptions covered under the program and for prescriptions covered by the department pursuant to subsection (c) of section 17b-265e of the 2008 supplement to the general statutes, as amended by this act</u>. Rebate amounts for brand name prescription drugs shall be equal to those under the Medicaid program. Rebate amounts for

generic prescription drugs shall be established by the commissioner, provided such amounts may not be less than those under the Medicaid program. A participating pharmaceutical manufacturer shall make quarterly rebate payments to the department for the total number of dosage units of each form and strength of a prescription drug which the department reports as reimbursed to providers of prescription drugs, provided such payments shall not be due until thirty days following the manufacturer's receipt of utilization data from the department including the number of dosage units reimbursed to providers of prescription drugs during the quarter for which payment is due.

Sec. 2. Subsection (c) of section 17b-265e of the 2008 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(c) The Department of Social Services shall, in accordance with the provisions of this section, pay claims for prescription drugs for Medicare Part D beneficiaries, who are also either Medicaid or ConnPACE recipients and who are denied coverage by the Medicare Part D plan in which such beneficiary is enrolled because a prescribed drug is not on the formulary utilized by such Medicare Part D plan. Payment shall initially be made by the department for a thirty-day supply, subject to any applicable copayment. Pharmaceutical manufacturers shall pay rebate amounts established pursuant to section 17b-491 of the 2008 supplement to the general statutes, as amended by this act, to the department for prescriptions paid by the department pursuant to this section on or after January 1, 2007. The beneficiary shall appoint the commissioner as such beneficiary's representative for the purpose of appealing any denial of Medicare Part D benefits and for any other purpose allowed under said act and deemed necessary by the commissioner.

Sec. 3. (NEW) (*Effective from passage*) Except as provided in subsection (c) of section 17b-265e of the 2008 supplement to the general statutes, as amended by this act, any pharmaceutical manufacturer of a

prescription drug covered by the Department of Social Services under any of the state medical assistance programs administered by the department shall provide rebates to the department for prescription drugs paid for by the department on or after February 1, 2008. The amount of rebates and the administration of the program shall be in accordance with subsections (e) and (f) of section 17b-491 of the 2008 supplement to the general statutes, as amended by this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*from passage*	17b-491(e)
Sec. 2	*from passage*	17b-265e(c)
Sec. 3	*from passage*	New section

Statement of Legislative Commissioners:

In the beginning of section 3, "Except as provided in subsection (c) of section 17b-265e of the 2008 supplement to the general statutes, as amended by this act," was added for purposes of clarity and consistency with other sections of the bill.

HS *Joint Favorable C/R* APP

APP *Joint Favorable Subst.-LCO*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 09 $	FY 10 $
Department of Social Services	GF - Cost Avoidance	14.5 million	17.4 million

Municipal Impact: None

Explanation

Sections 1 and 2 of the bill specify that pharmaceutical manufacturers must provide rebates on non-formulary drugs purchased under the Medicare Part D Supplemental Needs Fund. These rebates are currently required under the ConnPACE and Medicaid fee-for-service programs and offset program expenditures. The federal Centers for Medicare and Medicaid Services (CMS) recently determined that the state did not have the authority to pursue rebates on the non-formulary purchases. As such, the state was required to return to the manufacturers approximately $3 million. Based on rebates collected before this ruling by CMS, it is anticipated that the changes in these two sections will allow the state to recoup approximately $6 million in rebates annually.

Section 3 makes clear the Department of Social Services' (DSS) authority to seek rebates under all of its medical programs. In February 2008, DSS carved out pharmaceutical benefits from the HUSKY A and B and State Administered General Assistance (SAGA) programs, with the intent to operate under the department's preferred drug list and rebate structure. Prior to the carve-out, pharmacy rebates under the HUSKY programs were negotiated by the private managed care organizations (MCO's) and any savings were built into the capitated rates paid to the MCO's. The state received minimal rebates under the SAGA program. Under its current Medicaid authority, it

appears the state can pursue the rebates under the carved out HUSKY programs. However, the language in section 3 is necessary for the state to receive rebates under the SAGA program.

Based on rebates received on other medical programs, it is estimated the DSS will receive approximately $8.5 million in rebates in FY 08, assuming an October start date. The annualized rebates are estimated to be $11.4 million. These estimates assume that DSS will recoup 23% of program expenditures through the manufacturer's rebates.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis

sSB 33

AN ACT IMPLEMENTING THE GOVERNOR'S RECOMMENDATIONS WITH RESPECT TO SOCIAL SERVICES PHARMACY PROGRAMS.

SUMMARY:

This bill seeks to ensure that the state maximizes its receipt of rebates from drug manufacturers whose drugs are dispensed to individuals participating in Department of Social Services (DSS) pharmacy assistance programs. It requires the manufacturers to provide rebates for (1) nonformulary drugs DSS covers for Medicare Part D participants who are also eligible for Medicaid (dually eligible) and (2) drugs dispensed under the HUSKY and State-Administered General Assistance (SAGA) medical assistance programs.

EFFECTIVE DATE: Upon passage

PHARMACY PROGRAMS FOR WHICH REBATES AUTHORIZED

Nonformulary Drugs Provided to Medicare Part D Recipients who are Eligible for Medicare and Medicaid

The bill requires drug manufacturers to provide rebates for those drugs that (1) are provided to people participating in Medicare Part D and (2) DSS pays for because they are not on the beneficiary's Part D plan formulary and the plan will not pay for them. This applies both to individuals who are ConnPACE-eligible and those eligible for both Medicare and Medicaid (dually eligible), and is applicable to drugs for which DSS paid beginning January 1, 2007. Nonformulary drugs provided to Connecticut Pharmaceutical Assistance Contract for the Elderly and Disabled (ConnPACE) recipients are already eligible for rebates under the ConnPACE rebate agreements.

Other DSS Drug Assistance

The bill also requires manufacturers of any prescription drug that DSS covers under any other "state medical assistance programs" it administers to provide rebates for drugs for which DSS has paid back to February 1, 2008. These programs include Medicaid fee-for-service (FFS), HUSKY A and B, and SAGA. (DSS already collects rebates for Medicaid FFS drugs.)

DSS also runs the Connecticut AIDS Drug Assistance Program and has collected rebates for this program for years. These rebates go directly to the Department of Public Health. The bill gives DSS the authority to collect these rebates.

BACKGROUND

Rebates for Nonformulary Drugs for Medicare Part D Recipients

The federal Centers for Medicare and Medicaid Services (CMS) recently told DSS that it cannot require manufacturers to provide rebates on nonformulary drugs under Medicare Part D based on existing Medicaid rebate agreements. CMS asserted that these individuals receive drug assistance from Medicare not Medicaid. Consequently, DSS had to return $3 million in rebates it had collected. DSS intends to establish separate rebate agreements with manufacturers for these nonformulary drugs. DSS pays for these nonformulary drugs from a state-funded Supplemental Needs Fund established in 2005 (PAs 05-280, 05-2, November 2 Special Session, and 06-188).

Rebates for Other DSS Pharmacy Programs

Beginning February 1, 2008, DSS "carved out" pharmacy benefits from the HUSKY A, HUSKY B, and SAGA medical assistance programs. The managed care organizations and federally qualified health centers with which DSS contracted to run these programs had previously negotiated rebates for drugs that they covered and DSS factored this revenue into the capitation rates that it paid them for providing medical services. DSS expects to receive much higher rebates through direct agreements with the manufacturers.

Rebate Authority—Related Statutes

By law, pharmaceutical manufacturers must provide rebates for any ConnPACE drugs DSS pays for as a condition of participating in that program (CGS § 17b-491 (e).

The only other provision in law regarding rebates is included in the establishment of a Medicaid preferred drug list. That law permits DSS to negotiate supplemental rebate agreements above those required by federal Medicaid law with manufacturers whose drugs are on those lists. Federal Medicaid law requires manufacturers to provide rebates as a condition of participating in state Medicaid programs (42 USC § 1396r).

Although state law does not explicitly authorize DSS to seek general rebates under the Medicaid program, it could be argued that the above-cited federal law grants this authority.

COMMITTEE ACTION

Human Services Committee

Joint Favorable Change of Reference
Yea 18 Nay 0 (02/28/2008)

Appropriations Committee

Joint Favorable
Yea 47 Nay 0 (03/05/2008)